

## **REMARKS**

Claims 1 through 20 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1 through 5, 8 through 14 and 17 through 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,909,858 to Hawley. This rejection is respectfully traversed.

Applicant notes that Claims 1 and 12 recite that each of the body modules that are wholly disposed on a first lateral side of the centerbody cabin are uniquely configured in at least one of its length, width and capacity and that each of these body modules are employed in a first side of a centerbody cabin of another member of the family of aircraft having a larger capacity centerbody cabin. The Hawley reference illustrates and describes the use of identically sized and shaped segments (45) but mentions at column 5, lines 35 through 39 that “the widths of the passenger bays and payload bays need not be equal.”

Applicant respectfully submits that the Hawley reference does not present a prima facie case of anticipation as it does not teach or suggest the composition of a lateral side of an aircraft entirely with uniquely configured body modules, nor the use of this entire set of body modules in at least one larger aircraft. Applicant reminds the Examiner that the Federal Circuit has stated:

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled

with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill. *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 20 USPQ 2d 1746, 1749 (Fed. Cir. 1991).

In this regard, the CCPA has added that “[i]nherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient.” *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (C.C.P.A. 1981) (quoting *Hansgirc v. Kemmer*, 102 F.2d 212, 214, 40 USPQ 665, 667 (C.C.P.A. 1939) (emphasis in original).

Applicant’s configuration permits relatively smaller capacity body modules to be shifted outwardly when they are incorporated into a larger aircraft. As the bending load on a body module decreases with increased distance from the centerline of the centerbody, configuration in this manner maintains the bending loading of the body module within desired levels so that it is not necessary for “structural resizing” to accommodate increases in aircraft weight or capacity. In contrast, the Hawley reference appears to use a single, common segment (i.e., see, column 6, lines 2 through 4, “[t]he added payload modules also have commonality with those within the baseline body component.”), but also mentions that “structural resizing” may be necessary (see, column 5, line 65 through column 6, line 2).

In view of the above remarks, Applicant respectfully submits that the Office has not presented a prima facie case of anticipation as the Hawley reference does not teach or suggest the use of uniquely configured body modules on a side of the aircraft, and the incorporation of this set of uniquely configured body modules in at least one larger aircraft. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claims 1 and 12 under 35 U.S.C. §102(b).

Applicant notes that Claims 2 through 11 depend from Claim 1 and as such, should be in condition for allowance for the reasons set forth for Claim 1, above.

Applicant notes that Claims 13 through 20 depend from Claim 12 and as such, should be in condition for allowance for the reasons set forth for Claim 12, above.

Additionally, Applicant notes that:

- the Hawley reference employs a transition section (47) so that the wings are not directly joined to the centerbody cabin. Accordingly, Applicant submits that Claim 2 includes allowable subject matter.

- the Hawley reference appears to employ different wings (43, 73, 83) across a family rather than a pair of wings that are common to the entire family. Accordingly, Applicant submits that Claims 3 and 12 include allowable subject matter.

- the Hawley reference appears to employ segments that form a portion of the leading edge of the aircraft; the Hawley reference does not teach or suggest body modules that terminate rearwardly of the leading edge of the aircraft in a manner that is similar to that which is illustrated in Figures 6, 7A and 7B of the present application. Accordingly, Applicant submits that Claims 4 and 13 include allowable subject matter.

- the Hawley reference appears to employ segments with straight sides that do not “overlap” an adjacent segment; the Hawley reference does not teach or suggest body modules with tip portions that include an inner edge that is configured to mate with a forwardly positioned portion of the aircraft body in a manner that is similar to that which is illustrated in Figures 2 through 5D of the present application. Accordingly, Applicant submits that Claims 8 through 10 and 17 through 19 include allowable subject matter.

### **REJECTION UNDER 35 U.S.C. § 103**

Claims 6, 7, 15 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,909,858 to Hawley in view of U.S. Patent No. 6,065,720 to Ash et al. This rejection is respectfully traversed.

Applicant notes that Claims 6 and 7 depend from Claim 1 and that Claims 15 and 16 depend from Claim 12 and as such, should be in condition for allowance for the reasons set forth for Claim 1, above. Additionally, Applicant notes that the combination of the Hawley and Ash et al. references can not teach or suggest Applicant's invention as the Ash et al. reference describes the structural interface locations (8) as being operable for mounting the podded modular engine units (10). Accordingly, the propulsion source of the Ash et al. reference is mounted to the modular wing (4), rather than to a module that is aft of a centerbody.

In view of the above remarks, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claims 6, 7, 15 and 16 under 35 U.S.C. §103(a).


### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the

Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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